IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1481 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAVJIBHAI ALIAS BHALABHAI SOMABHAI PARMAR - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR SURESH M TRIVEDI for the Appellant.
MS NANDINI JOSHI, APP for the respondent.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 28/06/2006

ORAL JUDGMENT

This appeal has been preferred against the judgment and order of conviction dated 12th August,2004

passed by Learned Additional Sessions Judge, camp at Anand in Sessions Case No.315 of 1998, whereby the present appellant has been convicted and sentenced to undergo rigorous imprisonment for 5 years and ordered to pay a fine of Rs.10,000/-, in default, further simple imprisonment of one year, for the offence punishable under section 376 of the Indian Penal Code.

The appellant is also convicted and sentenced to undergo rigorous imprisonment for 1 year and to pay a fine of Rs.1,000/-, in default, further simple imprisonment of 3 months, for the offence punishable under section 452 of the Indian Penal Code.

The appellant is also convicted and sentenced to undergo rigorous imprisonment of 2 years and ordered to pay a fine of Rs.3,000/-, in default, further imprisonment of 6 months, for the offence punishable under section 324 of the Indian Penal Code.

All the sentences are ordered to run concurrently.

2. Though the matter is listed on the separate board as the accused is in jail, when the matter is called out, even prior to recess hours and after recess hours, learned counsel for the appellant was absent. As the accused is in jail, the matter has to be heard

expeditiously and the same is taken up for final hearing and the matter is listed on the separate board so that learned counsel for the appellant can know that the matter shall be taken up for hearing. Despite this, learned counsel for the appellant is absent.

3. Learned Additional Public Prosecutor Ms.Nandini Joshi for the respondent-State has narrated the fact that the incident had taken place on 29th April,1998 at about 10.30 p.m.. The prosecutrix was sleeping in her house along with her son. The appellant-accused came at the house with a knife. The prosecutrix resisted the appellant but the appellant entered into the house forcefully and, thereafter, committed rape upon prosecutrix. Thereafter, the husband of the prosecutrix came in the house and tried to catch hold of the accused but the appellant-accused caused injuries with knife to the prosecutrix. The Appellant ran away, leaving behind his clothes at the house of prosecutrix. Because of shouts, several persons, who were residing nearby came immediately. Thereafter, on the very same day i.e. 29th April,1998, the FIR was filed during night hours. Upon investigation, a charge sheet was filed and on the basis of the evidence on record, the appellant was convicted.

4. Learned Additional Public Prosecutor Ms.Nandini Joshi for the respondent-State submitted that looking to the deposition of the prosecutrix PW-1 at Exh-11, her version is corroborated by the complaint at Exh-12 as well as by the deposition of PW-2 at Exh-13 and deposition of Dr.Premkumar Pande - PW-8 at Exh-28, who had examined the prosecutrix. Injuries were found upon the person of the prosecutrix. Medical Certificate at Exh-30 also reflects not only the injuries but the case history.

5. Learned Additional Public Prosecutor for the respondent-State submitted that looking to the depositions of police witness PW-11 at Exh-38 and PW-12 at Exh-40 and looking to the panchnamas at Exh-17 and Exh-21, there is enough corroboration to the facts of the offence narrated by the prosecutrix. These facts, based upon the evidences, have been correctly appreciated by the Trial Court and no error has been committed by the Trial Court. The offence is proved beyond reasonable doubt by the prosecution.

6. Having heard the learned Additional Public Prosecutor for the respondent-State and looking to the evidence on record, I see no reason to take any other

view of the matter than what is taken by the Trial Court in Sessions Case No.315 of 1998. There are no reasons for this Court to take any deviation from the conclusion arrived at by the Learned Additional Sessions Judge, Camp at Anand in convicting the present appellant, mainly for the following facts and reasons:-

(i) From the evidence on record, it appears that the incident had taken place on 29th April,1998 between 10.00 p.m. to 10.30 p.m. The son of the prosecutrix was also in the house. The appellant came at the house of the prosecutrix with a knife and committed rape upon prosecutrix. When the husband of the prosecutrix came in the house and to tried to catch hold of the appellant-accused, the appellant used a knife and caused injuries to the prosecutrix. The appellant ran away, leaving behind his clothes. Immediately thereafter, FIR was lodged which is at Exh-12. Looking to the deposition of prosecutrix PW-1 at Exh-11, there are no contradictions and omissions in her deposition, on the contrary, there are enough corroborations, by other evidences, on record to the deposition of the prosecutrix. Looking to her deposition, in the opinion of this Court, she is a trustworthy witness.

(ii) Looking to the deposition of husband of the prosecutrix - PW-2 at Exh-13, there is corroboration to the version given by the prosecutrix. Both these witnesses have narrated the whole incident in detail as to how it had happened and nothing is taken away or shaken in their cross-examination. When the husband of the prosecutrix tried to catch hold of the appellant-accused, appellant caused injuries to the husband of the prosecutrix. The prosecutrix intervened and she was also injured by present appellant by a knife. This fact has also been narrated in the complaint at Exh-12, which is filed on very same day of incidence. These facts are also corroborated by the medical evidence. Looking to the deposition of PW-2, who is a trustworthy witness. His presence at the scene of offence was natural. There is no reason to disbelieve the depositions of PW-1 and PW-2. There are no omissions and contractions in the depositions of PW-1 and PW-2. It appears that PW-1 and PW-2 are rustic witnesses and have given depositions after several months. Despite this fact, looking to their depositions, there is nothing in the cross-examination, coming out, in favour of the appellant-accused.

(iii) From the deposition of Dr.Premkumar Pande -PW-8 at Exh-28, who had examined the prosecutrix, after

incident had taken place, he has deposed that the prosecutrix was examined on 30th April,1998 at 00:50 a.m. The incident had taken place on 29th April,1998 between 10:00 to 10:30 p.m. Thus, immediate was the FIR and immediately, this witness had examined the prosecutrix. Looking to the deposition of the Doctor, it is stated that the prosecutrix has given a case history to the Doctor that the appellant forcefully entered into the house of the prosecutrix and thereafter, committed rape and caused injuries upon her. There were two injuries of 2 x 3 c.m. on the back of the prosecutrix and another of 4 c.m. was also caused on the back of the prosecutrix. It has also been stated by the Doctor that these injuries were sufficient to cause death by a knife. Knife was recovered by the police under panchnama. This was proved with the help of the police witnesses. Thus, incised wounds were noticed by the Doctor, which was narrated in the complaint at Exh-12. Thus, the Medical Certificate issued by Doctor at Exh-30 and his deposition as PW-8 at Exh 28 are corroborated with the deposition of the prosecutrix.

(iv) Looking to the other evidence on record and deposition of Haji Shaifulamiya - PW-11 at Exh-38 and deposition of Nanubhai Parmar- PW-13 at Exh-42, who were

police witnesses, it is clear that immediately the FIR was registered and further investigation was carried out by PW-13, who recovered the clothes of the appellant-accused, left at the house of the prosecutrix and the clothes of the prosecutrix and a knife. This panchnama has been proved by the prosecution witnesses with the help of the police witnesses. Though the panchas have turned hostile, it is a matter of fact that once they all have signed and identified their signatures on the panchnama, there is no reason for this Court to discard the evidence of scene of offence panchnama, panchnama of clothes of accused as well as of the prosecutrix. Looking to these evidences, there are enough corroborations to the version stated by the prosecutrix. Because, the panchas have turned hostile, they do not render the police witnesses untrustworthy. The trustworthiness of police witnesses cannot be evaluated through the deposition of the panchas but it is the duty of the Court to evaluate the panchas and police witnesses separately and independently, looking to the other evidences on record. Learned counsel for the appellant is absent but looking to the memo of the Criminal Appeal, it has been reiterated that the panchas have turned hostile and, therefore, the Trial Court has wrongly relied upon the depositions of the panchas. This contention raised in the

memo of the appeal is not accepted by this Court. Looking to the totality of the evidence on record and the injures upon the prosecutrix, the deposition of Dr.Premkumar- PW-8, the Medical Certificate at Exh-30 and the depositions of the police witnesses, I am of the clear opinion that the police witnesses are trustworthy witnesses. They have no enemocity with the present appellant-accused. Looking to the facts of the case, there is no reason for this Court to disbelieve these police witnesses.

(v) Learned Additional Public Prosecutor has relied upon the decision rendered by this Court in the case of **State of Gujarat V/s. Gurukrupa Kariyana Stores & Ors reported in 1998(2) GLH 857** and pointed out that panchnamas are said to have been proved with the depositions of the public officers, who are discharging public duty (in the facts of the present case – police witnesses) especially when the panchas are accepting their signature on the panchnama. Once the signatures have been admitted and identified despite certain suggestions in the cross-examination of the police witnesses, the clear answer has been given by the police witnesses and hence, there is no reason to disbelieve the deposition of the police witnesses. Despite the panchas

have turned hostile, there is no such law that depositions given by public officers like police witnesses or food inspector, etc., cannot be believed by the Court especially in proving panchnama without help of panchas. Suffice it to say, once the panchas have admitted their signatures on panchnama and public officers, who are, otherwise, found as trustworthy witnesses and corroborating to facts narrated either by complaint or other witnesses, their depositions cannot be discarded merely because panchas have turned hostile. Learned Additional Public Prosecutor also submitted that the decision referred in the case of **State of Gujarat V/s. (Shri) Mannanbhai Hasanali & Anr. reported in 1998(2) GLH 943** and pointed out that even if panchas have turned hostile, on the basis of the deposition of the public officers, who are performing public duties, the panchnama can be said to have been proved and can be said to be relied upon.

(vi) Learned Additional Public Prosecutor has also relied upon a judgment delivered by the Hon'ble Supreme Court in the case of **Babulal Hargovinddas V/s. State of Gujarat reported in AIR 1971 SC 1277** as well as in the case of **State of U.P. V/s. Hanif reported in AIR 1992 SC 1121.** In the aforesaid judgment, it is held that even

if the panchas have turned hostile, the panchnama of the clothes of the accused and panchnama of the scene of offence which were drawn with the help of the police witnesses can be relied upon and they are rightly relied upon by the Trial Court. The appreciation of the evidences by the Trial Court is absolutely true and correct. All these evidences given by police witnesses as PW-11 and PW-13 read with Exh-15, 17 and 21 are corroborative to the complaint below Exh-12 and deposition of the prosecutrix. Even looking to the FSL report below Exh-46, the manner in which the offence has been committed by the appellant is getting corroborated.

7. Thus, looking to the evidence on record, immediate is the FIR. The deposition of the prosecutrix is clear enough to base conviction against the present appellant which is correctly corroborated by the deposition of Doctor at Exh-28 and Medical Certificate at Exh-30 and under different panchnamas of clothes of accused and prosecutors with the help of PW-11 and PW-13, and hence, I am clearly of the opinion that the conclusion arrived at by the Trial Court in convicting the present appellant is true and correct. There is no error in appreciating the evidence on record by the Trial Court. The quantum of punishment inflicted upon the

appellant is also in consonance with the guilt of present appellant and in consonance with the provision of the Indian Penal Code. There is no substance in this Appeal and, therefore, the same is hereby dismissed.

(D.N.PATEL,J)

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